

REMARKS/ARGUMENTS

Claims 24-43 are pending. The independent claims are 24, 36, and 41.

The Abstract was objected to for not being in single paragraph form.

Claims 24-43 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of Ito et al., U.S. Patent No. 6,654,769 B2. A Terminal Disclaimer is submitted herewith to overcome the rejection.

Claims 24-28, 33-36, and 39-41 were rejected under 35 U.S.C. § 102(e) for allegedly being anticipated by Wolff, U.S. Patent No. 6,185,601.

It is noted with appreciation that claims 29-32, 37-38, and 42-43 would be allowable if rewritten to overcome the rejections under double patenting, as stated on page 14 of the Detailed Action. It is respectfully submitted, however, that the independent claims as amended overcome the cited art to Wolff.

Wolff is directed to “client load rebalancing.” Client load rebalancing refers to the ability of a client to re-map a path through a plurality of nodes to a resource. The re-mapping may take place in response to a redirection command emanating from an overloaded node, e.g. server. *Col. 4, lines 52-56.*

By contrast, amended independent claims 24, 36, and 41 recite a node having a disk driver that can detect when a data path becomes unavailable. In response, the node performs the recited changing of the data paths. The recited disk driver is shown in Fig. 1 of the specification as disk driver 250. The operation of the disk driver is described beginning on page 32, line 9.

Thus, whereas Wolff teaches clients that are connected to servers as the entities that perform re-mapping, the pending claims recite that each node contain a disk driver that detects a fault, and that the node in response to the fault performs a change in the data path. The difference between Wolff’s *clients* and the claims’ *disk driver* is a patentable distinction. It is earnestly submitted therefore that the pending amended claims distinguish over Wolff, and that the Section 102 rejection is overcome.

Appl. No. 10/695,149
Amdt. sent February 10, 2006
Reply to Office Action of December 5, 2005

PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



George B. F. Yee
Reg. No. 37,478

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 650-326-2400
Fax: 415-576-0300
GBFY:cmm
60669985 v1